

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WYOMING OUTDOOR COUNCIL,
262 Lincoln Street
Lander, WY 82520,

Plaintiff,

V.

Case No. 19-cv-2175

U.S. BUREAU OF LAND MANAGEMENT,
1849 C Street, NW
Washington, DC 20240,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Wyoming Outdoor Council, an organization dedicated to the conservation of Wyoming's natural resources, brings this action against the Bureau of Land Management under the Freedom of Information Act, 5 U.S.C. § 552, and the U.S. Department of the Interior's FOIA regulations, 43 C.F.R. § 2.1 *et seq.*

2. On February 9, 2018, the Wyoming Outdoor Council provided the BLM with a request for documents concerning oil-and-gas operations in Wyoming's Chain Lakes Wildlife Habitat Management Area. More than seventeen months later, the BLM has yet to issue a determination regarding the Council's request. The agency's unlawful delay has prevented the Council from learning about activities that threaten lands and wildlife the organization is committed to protecting. Moreover,

the delay has undermined FOIA's purpose of providing government transparency. Plaintiff accordingly seeks declaratory and injunctive relief to compel the BLM's compliance with the requirements of FOIA.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B), and 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

4. Plaintiff Wyoming Outdoor Council is a nonprofit, public-interest organization that was founded in 1967. The Council is Wyoming's oldest independent conservation organization. It works to hold government agencies and industries accountable for decisions that affect Wyoming's wildlife, air and water quality, and public health. The Council's nearly 2,000 members recognize that Wyoming's landscapes, wildlife, and diverse cultural history are vital resources, and that everyone in the state relies on its clean air and water. The Wyoming Outdoor Council has an interest in, and a statutory right to, the records at issue in this case, and it has been adversely affected as a result of the BLM's unlawful failure to make a determination and produce the requested materials.

5. Defendant Bureau of Land Management is a federal agency subject to FOIA. *See* 5 U.S.C. § 552(f)(1). The BLM has control over the records requested by the Wyoming Outdoor Council.

STATUTORY BACKGROUND

6. “The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire and Rubber Co.*, 437 U.S. 214, 242 (1978). FOIA promotes government transparency by establishing the public’s right to access federal-agency records with certain narrow exceptions. *See* 5 U.S.C. § 552(b).

7. FOIA requires federal agencies to make agency records “promptly” available to the public upon receiving a properly filed request unless the requested documents fall into one of nine exceptions specifically delineated under the statute. 5 U.S.C. §§ 552(a)(3)(A), 552(b)(1)-(9).

8. An agency is generally required to determine within 20 working days of receiving a request whether or not it will comply with it. 5 U.S.C. § 552(a)(6)(A)(i). The agency must “immediately notify” the requester of this determination, as well as the reasoning behind it and the requester’s right to appeal any adverse determinations. *Id.* If the agency fails to respond within this time limit, the requester is “deemed to have exhausted his administrative remedies” and can immediately file a complaint in federal court. *Id.* § 552(a)(6)(C)(i).

9. As the D.C. Circuit has emphasized, a determination “must be more than just an initial statement that the agency will generally comply with a FOIA request and will produce non-exempt documents and claim exemptions in the future. Rather, in order to make a ‘determination’ and thereby trigger the

administrative exhaustion requirement, the agency must at least: (i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the ‘determination’ is adverse.” *Citizens for Responsibility and Ethics in Wash. v. Fed. Election Comm’n*, 711 F.3d 180, 188 (D.C. Cir. 2013).

10. In “unusual circumstances” an agency can extend its response time by up to 10 working days. 5 U.S.C. § 552(a)(6)(B)(i). If an agency wishes to claim an extension due to unusual circumstances, it must notify the requester in writing and state both the cause of the delay and the date by which the agency expects to have a determination ready. *Id.*; 43 C.F.R. § 2.19(a).

11. The Interior Department’s FOIA regulations have established “processing tracks to distinguish simple requests from more complex ones on the basis of the estimated number of workdays needed to process the request.” 43 C.F.R. § 2.15(a). The Department’s multi-track process, however, does not alter FOIA’s statutory deadlines for Interior agencies to determine whether to comply with records requests. *Id.* § 2.15(f).

FACTUAL BACKGROUND

12. The Chain Lakes Wildlife Habitat Management Area is located in the Red Desert of southern Wyoming. *See* Wyo. Game and Fish Dep’t, Chain Lakes—Wildlife Habitat Mgmt. Area (last updated June 28, 2019), *available at* <https://perma.cc/66EL-QYX4>. The area includes more than 60,000 acres of habitat

for migratory shorebirds, sage-grouse, and other wildlife. *Id.*; Jeff Gearino, *Wildlife Area Could See Drilling*, Casper Star-Tribune, Mar. 30, 2005, *available at* <https://perma.cc/MBF5-G4G2>. The land also provides both winter habitat for antelope and migration corridors for pronghorn moving between their summer and winter ranges. Wyo. Game and Fish Dep’t, Chain Lakes—Wildlife Habitat Mgmt. Area (last updated June 28, 2019), *available at* <https://perma.cc/66EL-QYX4>. Members of the public rely on the Chain Lakes region for hunting, camping, wildlife photography, and other activities. *Id.*

13. The Chain Lakes area contains more than 30,000 acres of public land that “occurs in a checkerboard ownership pattern where approximately 54 percent of the lands are either owned or leased by [the Wyoming Game and Fish Department], and the remaining 46 percent are federal lands administered by the BLM[.]” BLM, Proposed Res. Mgmt. Plan and Final Env’tl. Impact Statement for Public Lands Administered by the BLM Rawlins Field Office (Jan. 2008), at 3-90–3-91, *available at* <https://perma.cc/6NEL-EQ3U>.

14. In 2003, the BLM received public comments suggesting that the agency designate federal lands within the Chain Lakes region as an “area of critical environmental concern” in order to protect them from oil-and-gas development. *See* BLM, Scoping Report: Rawlins Res. Mgmt. Plan (May 2003), at 12, 15, 17, *available at* <https://perma.cc/WC33-VWHA>; BLM, Rawlins Res. Mgmt. Plan, Draft Env’tl. Impact Statement (Dec. 2004), at 4-128 (noting that an “ACEC designation” for the Chain Lakes would have “restrict[ed] and/or prohibit[ed] new mineral development

within the area, allowing for increased protection of pronghorn winter habitat and unique alkaline desert wetlands”), *available at* <https://perma.cc/R364-DT8Q>.

According to the BLM, “ACEC designations highlight areas where special management attention is needed to protect and prevent irreparable damage to important historic, cultural, and scenic values, fish, or wildlife resources, or other natural systems or processes[,]” or “to protect human life and safety from natural hazards.” BLM Guidance Manual, Sec. 1613, *available at* <https://perma.cc/GE3U-NQ86>. Ultimately, however, the BLM decided against this designation. *See* BLM, Record of Decision and Approved Rawlins Res. Mgmt. Plan (Dec. 2008), at 2-3, 2-64, *available at* <https://perma.cc/NPJ5-BRR2>.

15. In 2006, while the BLM’s planning process was still underway, more than twenty oil-and-gas companies proposed to develop up to 8,950 new gas wells across 1.1 million acres of southern Wyoming. BLM, Continental Divide-Creston Natural Gas Dev. Proj. Final EIS (Apr. 2016), App. B at B-1, B-4, *available at* <https://perma.cc/DT5Z-NC3G>; BLM, Record of Decision: Continental Divide-Creston Natural Gas Dev. Proj. (Sep. 2016), at 6, *available at* <https://perma.cc/N7SQ-ZTTD>. The BLM approved the development in 2016. *See* BLM, Record of Decision: Continental Divide-Creston Natural Gas Dev. Proj. (Sep. 2016), at 6, *available at* <https://perma.cc/N7SQ-ZTTD>. The Chain Lakes are located within the project area. *See id.* at 7-8, 15, 17. As a result, the development threatens to devastate an area that is relied upon by wildlife and the public alike. *See id.*

16. On February 9, 2018, the Wyoming Outdoor Council submitted a FOIA request to the BLM because of the organization's concerns regarding the overwhelming environmental impacts to the Chain Lakes area from oil-and-gas development. (The request is attached as Exhibit 1.) The Council sought records regarding the earlier requests to designate the Chain Lakes as an area of critical environmental concern; any correspondence related to the requests; records related to the BLM's review and rejection of the designation; and records created or received since January 1, 2017 regarding oil-and-gas development in the Chain Lakes area.

17. On March 26, 2018, the BLM sent an email to the Council's representative stating that the agency had not yet made a determination on the FOIA request, which had previously been assigned number BLM-2018-00463. (The email is attached as Exhibit 2.)

18. On June 27, 2018, the BLM notified the Council that its request had been moved from the "Complex" processing track to the "Exceptional/Voluminous" track. (The agency's letter is attached as Exhibit 3.) The BLM also noted that the Council's request was fifteenth on the agency's processing list. The BLM confirmed, finally, that it had not yet made a determination on the request.

19. On March 18, 2019—more than a year after the Council's submission of its FOIA request—the BLM notified the organization in an email that it had located "approximately 12,631 pages/files of potentially responsive material[.]" (The email is attached as Exhibit 4.) The BLM noted, however, that the material still

“require[d] a full review”—by both the agency and a number of well operators—to ensure that none of FOIA’s exemptions applied. In other words, the agency has yet to review the documents at issue and make a determination regarding the Council’s request. According to the Interior Department’s tracking database, the request remained “[o]pen” as of the filing of this complaint—more than fifteen months after the “[d]ue [d]ate for [a] [d]etermination[.]” (A copy of the Department’s tracking page is attached as Exhibit 5.)

20. As a result of the BLM’s failure to make a determination regarding the organization’s FOIA request before the statutory deadline, the Wyoming Outdoor Council has constructively exhausted its administrative remedies and may seek immediate judicial review pursuant to FOIA. 5 U.S.C. § 552(a)(6)(C)(i).

**CLAIM FOR RELIEF:
Violation of FOIA**

21. Plaintiff incorporates by reference the allegations set forth in all of the preceding paragraphs of this complaint.

22. By failing to make a determination and to produce records in response to the Wyoming Outdoor Council’s February 9, 2018 records request, the Bureau of Land Management is in violation of the mandatory time limits established under FOIA and the Department of the Interior’s FOIA regulations. *See* 5 U.S.C. §§ 552(a)(6)(A), 552(a)(6)(B)(i); 43 C.F.R. §§ 2.16(a), 2.19.

REQUEST FOR RELIEF

Plaintiff respectfully requests that this Court:

1. Declare that the BLM is in violation of FOIA and the Interior Department's FOIA regulations with respect to its ongoing failure to determine whether to comply with the Wyoming Outdoor Council's February 9, 2018 records request;
2. Order the BLM to make a determination immediately regarding the Wyoming Outdoor Council's February 9, 2018 records request;
3. Order the BLM to immediately process the Wyoming Outdoor Council's February 9, 2018 records request and to promptly produce, by a specific date, all nonexempt records that are responsive to the request;
4. Award the plaintiff its reasonable costs and attorneys' fees in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant any further relief the Court may deem just and proper.

Respectfully submitted this 23rd day of July, 2019.

/s/ Sean M. Helle

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* This complaint was prepared with the assistance of Hunter Bohannon, Bobby DeMarco, Erin Hogan-Freemole, Shelby Krantz, and Cynthia Sanchez, who were students in the University of Colorado Law School's Getches-Green Natural Resources and Environmental Law Clinic.